



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1991

Mr. James Showen
Senior Assistant City Attorney
City of Tyler
P. O. Box 2039
Tyler, Texas 75710

OR91-652

Dear Mr. Showen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13305.

You have received a request for all records, including witnesses' statements, police officer's statements, arrest reports, and the names and notes of investigating officers, arising out of charges against an individual for aggravated robbery, retaliation, and felony theft on May 29, 1990. You have informed us that the individual, who is also the person who has requested the records, is currently serving a sentence for a conviction arising out of those charges. The request also seeks any and all arrest reports relating to this individual before or after May 29, 1990. In addition to documents relating to the May 29, 1990 charges, you have submitted six other arrest reports.¹ You claim that this material is protected from disclosure under sections 3(a)(3) and 3(a)(1).

¹The arrest reports pertain to arrest on charges of public intoxication on November 11, 1986, arrest on outstanding traffic warrants on August 18, 1986; arrest on charges of class "C" theft on May 6, 1986, arrest on charges of sexual assault on October 1, 1985, arrest on charges of theft under \$20.00 on July 29, 1986, and arrest on charges of reckless conduct on November 2, 1983.

Section 3(a)(3) excepts "information relating to litigation of a criminal or civil nature . . . to which the state or a political subdivision is, or may be, a party" In criminal cases, litigation is deemed pending as long as the applicable statute of limitations is not expired and all appellate and postconviction remedies have not been exhausted. V.T.C.S. art. 6252-17a, § 3(e). Certain types of information in offense or arrest reports, however, are generally public information, specifically the type of information found to be available to the public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See also Open Records Decision Nos. 394 (1983); 127 (1976) (copies of which are enclosed). Information found available in *Houston Chronicle* is equally available under section 3(a)(3) as it is under 3(a)(8). Open Records Decision No. 597 (1991) (a copy of which is enclosed). Therefore, you must release any such information for each requested offense or arrest report. Because the individual has not yet exhausted his appellate and postconviction remedies with respect to his conviction arising out of the May 29, 1990 incident, the remainder of the May 29, 1990 offense report is protected under section 3(a)(3). With respect to the remaining offense or arrest reports, see note 1 *supra*, the materials may be withheld under section 3(a)(3) to the extent the criminal statute of limitations on those charges has not expired.²

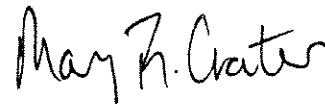
With respect to any remaining reports, you also claim that the offense or arrest reports should be redacted to delete the names, addresses and other identifying information of witnesses and police officers -- information which you assert is protected under the section 3(a)(1) informer's privilege. The purpose of this privilege is to prevent retaliation against informants. Open Records Decision No. 208 (1978). It does not apply when the informant's identity is known by the accused. *Id.* Nor does it apply to reporting officers or other officers acting in the course of their normal duties. Accordingly, you may redact the names or any other identifying information of any witnesses of whom the person requesting the records does not have knowledge. In every other respect, however, the remaining offense or arrest reports must be disclosed in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

²You have not made any showing that civil litigation is reasonably anticipated with respect to these matters.

a published open records decision. If you have questions about this ruling, please refer to OR91-652.

Yours very truly,

A handwritten signature in cursive script, reading "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/mc
Ref: ID#13305

Enclosures: Documents
Open Records Decision Nos. 597, 394, 127

cc: Mr. Henry F. Hudson #573956
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